

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

SEP 27 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of the )  
Telecommunications Act of 1996: )

Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other )  
Customer Information )

CC Docket No. 96-115

DOCKET FILE COPY ORIGINAL

**BELLSOUTH REPLY TO ATSI'S LATE-FILED COMMENTS**

BellSouth Corporation, on behalf of BellSouth Enterprises, Inc., BellSouth Telecommunications, Inc., and their affiliated companies ("BellSouth"), hereby submits this Reply to the late-filed comments of Association of Telemessaging Services International ("ATSI") in the above proceeding. This Reply is being filed pursuant to a Motion To Strike Comments Of Association Of Telemessaging Services International, or in the Alternative, Motion For Leave To File Responsive Pleading submitted this same day by BellSouth.

ATSI's late-filed comments focus on two issues: ATSI's view of "competitive balance" in rules governing access to and use of customer proprietary network information ("CPNI") and ATSI's proposed details for administration of the dissemination of CPNI to third parties.

BellSouth addresses each of these issues below.

No. of Copies rec'd 17/12  
List A B C D E

## **I. “Competitive Balance”**

ATSI urges the Commission through this proceeding to “weigh the competitive positions” of carriers and ESPs and “bring into balance these two positions with respect to the use of CPNI.”<sup>1</sup> ATSI’s arguments regarding competitive balance have been well considered and repeatedly rejected in the past. Passage of the 1996 Act<sup>2</sup> does nothing to tilt the Commission’s past considerations in favor of ATSI. Accordingly, ATSI’s arguments must be rejected.

The Commission has repeatedly concluded that consumer privacy expectations warrant a stricter CPNI access threshold for nonaffiliated third parties than is required for access to or use of CPNI by the company with whom a customer already has an established relationship.<sup>3</sup> Throughout its proceedings, the Commission consistently has conducted a balancing analysis, paying particular attention to the “competitive equities” of its rules.<sup>4</sup> The Commission has just as consistently concluded that (other than for very large business customers) rules that presumptively permit a carrier to have access to its own customer records while requiring third parties to obtain written authorization from a customer before being given access to that information meet that balancing test. ATSI’s arguments here are nothing but a late-filed rendition of its failed arguments of the past.

---

<sup>1</sup> ATSI Comments at 2.

<sup>2</sup> Section 702 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the “1996 Act”), added a new Section 222 to the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*

<sup>3</sup> *See, e.g., Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd. 7571, n. 159 (1991) (“Although privacy concerns are implicated by disclosure of CPNI to third parties outside the BOC, the CPNI rules have always protected against such disclosure. A more extensive prior authorization rule is not necessary to protect customers’ privacy interests.”).

<sup>4</sup> *See, e.g., id.* at 7609-13.

Passage of the 1996 Act further undermines ATSI's argument, rather than helps it. Section 222 reinforces and validates the Commission's past inclusion of a "privacy prong" in its balancing analysis. Section 222 is designed, first and foremost, to protect consumers' reasonable privacy expectations. As the Commission has long recognized both in its past consideration of CPNI issues and in other contexts,<sup>5</sup> consumers have substantially different expectations regarding the use of information about their business transactions depending on whether they have a preexisting business relationship with the party having or desiring access to that information. Section 222 protects these different expectations by requiring written authorization from a customer before a carrier must provide information about that customer's service to a nonaffiliate, while imposing no such requirement on a carrier's own use of the information.

Because Section 222 does not support its position, it is perhaps understandable that ATSI simply chose to ignore that section's privacy orientation. The Commission, of course, does not have that flexibility and must include Section 222's privacy focus in its analysis. By failing to include consideration of this principle focus in its arguments, ATSI's comments provide little contribution to the Commission's analysis. Accordingly, ATSI's arguments regarding "competitive balance" should be rejected.

## **II. Administrative Issues**

ATSI's argument regarding administration of requests from third parties for access to customer records can be divided into two parts: an appeal for a reasonable and manageable mechanism through which third party requests for CPNI would be fulfilled and a plea for an

---

<sup>5</sup> See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd. 8752 (1992).

enforcement mechanism though which “to immediately address any dispute involving a CPNI request.”<sup>6</sup>

BellSouth agrees in principle with ATSI’s first proposition that the process for responding to proper requests for CPNI by third parties should be administratively workable. BellSouth urges the Commission to be cautious, however, not to mandate the specific mechanism or arrangements to be implemented.<sup>7</sup> Carriers should be able to develop their own mechanisms for tracking and responding to such requests. The Commission should also remain mindful that Section 222 is designed first and foremost to protect consumers’ reasonable expectations regarding use or disclosure of their service records. Thus, Section 222’s overriding purpose is not to facilitate dissemination of information to third parties, but to protect against unauthorized dissemination. Any Commission requirements addressing access to CPNI by third parties must reflect that perspective.

BellSouth disagrees with ATSI’s demands for special enforcement mechanisms for addressing disputes that may arise regarding CPNI. In the first instance, BellSouth does not believe that “disputes” will arise to a level warranting special enforcement procedures. Apparently, neither did Congress given the absence of any direction to the Commission to develop such a mechanism.<sup>8</sup> Nor is it appropriate to consider CPNI issues under the expedited procedures

---

<sup>6</sup> ATSI Comments at 7.

<sup>7</sup> Nor should the Commission attempt to prescribe the appropriate forms that may be used, since to do so would trap the Commission in the micro-management and wordsmithing imbroglio against which BellSouth cautioned in its comments. *See*, BellSouth Comments at 17-18.

<sup>8</sup> *Compare* 47 U.S.C. § 222 *with* 47 U.S.C. § 260(b), 275(c).

to be developed under Section 260,<sup>9</sup> since those procedures are to be for the limited purpose of redressing claims of violation of Section 260(a), not Section 222.

Perhaps of more concern than whether such mechanisms are even needed, however, is that through its request here, coupled with its comments in the *Telemessaging Safeguards*<sup>10</sup> proceeding, ATSI has signaled an apparent intent to pursue regulatory adjudication as its favored means of resolving “disputes”. Moreover, ATSI has urged the Commission to adopt procedural rules that not only would stack the deck in its favor through substantive “presumptions”, but also that would relieve it of “burdens” such as doing necessary “preparatory work.”<sup>11</sup> The concern that ATSI is attempting to tilt the Commission’s procedural rules substantially in its favor is all the more compelling given that ATSI has chosen to ignore the rules that already govern its participation in this proceeding.<sup>12</sup> The Commission should reject ATSI’s plea for “special procedures” for handling CPNI disputes.

### CONCLUSION

ATSI’s arguments regarding “competitive balance” have already been rejected and add no value here. Any requirements for administration of third party CPNI requests should be reasonable and manageable, should be accommodating of the individual customer’s reasonable

---

<sup>9</sup> 47 U.S.C. § 260.

<sup>10</sup> Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, Notice of Proposed Rulemaking, CC Docket No. 96-152, FCC 96-310 (released July 18, 1996).

<sup>11</sup> ATSI Comments, CC Docket No. 96-152, at 7-16. *See, also* BellSouth Reply, CC Docket No. 96-152, at 7-10.

<sup>12</sup> *See*, BellSouth Motion to Strike, filed contemporaneously herewith.

expectation of privacy, and should be more than merely a springboard to litigation under lopsided procedural rules. On the whole, ATSI's late-filed comments provide little useful insight and should be rejected.

Respectfully submitted,

**BELLSOUTH CORPORATION**

By Its Attorneys

A handwritten signature in black ink, appearing to read "AK" followed by a stylized name, possibly "A. Kirven Gilbert III".

M. Robert Sutherland

A. Kirven Gilbert III

Suite 1700  
1155 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3610

(404) 249-3388

**DATE:** September 27, 1996

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 27th September, 1996 served the following parties to this action with a copy of the foregoing BELLSOUTH REPLY TO ATSI'S LATE-FILED COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

  
Sheila Bonner

**CC DOCKET NO. 96-115**

Cincinnati Bell Telephone Company  
FROST & JACOBS  
Thomas E. Taylor  
Jack B. Harrison  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202

SBC Communications Inc.  
James D. Ellis  
Robert M. Lynch  
David F. Brown  
175 E. Houston, Room 1254  
San Antonio, TX 78205

Southwestern Bell Telephone Company  
Durward D. Dupre  
Michael J. Zpevak  
Robert J. Gryzmala  
One Bell Center, Room 3520  
St. Louis, Missouri 63101

NYNEX Telephone Companies  
Saul Fisher  
Thomas J. Farrelly  
1095 Avenue of the Americas  
New York, NY 10036

The Bell Atlantic Telephone Companies  
Lawrence W. Katz  
1320 North Court House Road  
Eighth Floor  
Arlington, Virginia 22201

Ameritech  
Alan N. Baker  
Michael S. Pabian  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196

Virgin Islands Telephone Corporation  
Reed Smith Shaw & McClay  
Jonathan E. Canis  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005

Sprint Corporation  
Jay C. Keithley  
Leon M. Kestenbaum  
Norina T. Moy  
1850 M Street, N.W.  
Suite 1110  
Washington, D.C. 20036

Craig T. Smith  
Sprint Corporation  
P. O. Box 11315  
Kansas City, Missouri 64112

U S West, Inc.  
Kathryn Marie Krause  
Suite 700  
1020 19th Street, N.W.  
Washington, D.C. 20036



ALLTEL Corporate Services, Inc.  
Glenn S. Rabin  
655 15th Street, N.W.  
Suite 200  
Washington, D.C. 20005

United States Telephone Association  
Mary McDermott  
Linda Kent  
Charles D. Cosson  
Keith Townsend  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

NYNEX Telephone Companies  
Saul Fisher  
Thomas J. Farrelly  
1095 Avenue of the Americas  
New York, NY 10036

Frontier Corporation  
Michael J. Shortley, III  
180 South Clinton Avenue  
Rochester, NY 14646

Pacific Telesis Group  
Lucille M. Mates  
Sarah R. Thomas  
Patricia L. C. Mahoney  
140 New Montgomery Street  
Room 1522A  
San Francisco, CA 94105

Pacific Telesis Group  
Margaret E. Garber  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

GTE Service Corporation  
Richard McKenna  
600 Hidden Ridge  
Irving, Texas 75015

GTE Service Corporation  
David J. Gudino  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

National Association of Regulatory Utility  
Commissioners  
Paul Rodgers  
Charles D. Gray  
James Bradford Ramsay  
1201 Constitution Avenue, Suite 1102  
Post Office Box 684  
Washington, D.C. 20044

Assemblyman Anthony J. Genovesi  
Legislative Office Building  
Room 456  
Albany, NY 12248-0001

People of the State of California and the Public  
Utilities Commission of the State of California  
Peter Arth, Jr.  
Edward W. O'Neill  
Mary Mack Adu  
505 Van Ness Avenue  
San Francisco, CA 94102

Pennsylvania Office of Consumer Advocate  
Philip F. McClelland  
Irwin A. Popowsky  
Office of Attorney General  
1425 Strawberry Square  
Harrisburg, PA 17120

Public Utility Commission of Texas  
Jackie Follis,  
Senior Policy Analyst  
Office of Regulatory Affairs  
7800 Shoal Creek Boulevard  
Austin, TX 78757-1098

American Public Communications Council  
DICKSTEIN, SHAPIRO & MORIN, L.L.P.  
Albert H. Kramer  
Robert F. Aldrich  
2101 L Street, N.W.  
Washington, D.C. 20554

Yellow Pages Publishers Association  
Halprin, Temple, Goodman and Sugrue  
Albert Halprin  
Joel Bernstein  
1100 New York Avenue, N.W.  
Suite 650E  
Washington, D.C. 20005

Association of Directory Publishers  
Theodore Case Whitehouse  
Michael F. Finn  
WILLKIE FARR & GALLAGHER  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20036

Small Business in Telecommunications  
Brown and Schwaninger  
Dennis C. Brown  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006

Consumer Federation of America  
Bradley Stillman, Esq.  
1424 16th Street, N.W.  
Suite 604  
Washington, D.C. 20036

The Alarm Industry Communications Committee  
KELLEY DRYE & WARREN, LLP  
Danny E. Adams  
Steven A. Augustino  
1200 Nineteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036

CompuServe Incorporated  
5000 Arlington Centre Boulevard  
P. O. Box 20212  
Columbus, OH 43220

CompuServe Incorporated  
SUTHERLAND, ASBILL & BRENNAN  
Randolph J. May  
Bonding Yee  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404

Information Technology Association of America  
Squire, Sanders & Dempsey  
Joseph P. Markoski  
Marc Berejka  
1201 Pennsylvania Avenue, N.W.  
P. O. Box 407  
Washington, D.C. 20044

Personal Communications Industry Association  
Mark J. Golden  
Vice President of Industry Affairs  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314-1561

AirTouch Communications, Inc.  
David A. Gross  
Kathleen Q. Abernathy  
1818 N Street, N.W.  
Suite 800  
Washington, D.C. 20036

AirTouch Communications, Inc.  
Pamela Riley  
One California Street  
San Francisco, CA 94111

Arch Communications Group, Inc.  
PAUL, HASTINGS, JANOFSKY & WALKER  
Carl W. Northrop  
Christine M. Crowe  
1299 Pennsylvania Avenue, N.W.  
10th Floor  
Washington, D.C. 20004-2400

Paging Network, Inc.  
REED SMITH SHAW & McCLAY  
Judith St. Ledger-Roty  
Lee A. Rau  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005

Cable & Wireless, Inc.  
Ann P. Morton, Esq.  
8219 Leesburg Pike  
Vienna, Virginia 22182

America's Carrier's Telecommunication Association  
Helein & Association, P.C.  
Charles H. Helein  
8180 Greensboro Drive  
Suite 700  
McLean, Virginia 22102

MCI Telecommunications Corporation  
Frank W. Krogh  
Donald J. Elardo  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Excel Telecommunications, Inc.  
J. Christopher Dance  
Vice President, Legal Affairs  
Kerry Tassopoulos  
Director of Government Affairs  
9330 LBJ Freeway, Suite 1220  
Dallas, Texas 75243

Excel Communications, Inc.  
LAW OFFICES OF THOMAS K. CROWE, P.C.  
Thomas K. Crowe  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037

AT&T Corp.  
Mark C. Rosenblum  
Leonard J. Cali  
Judy Sello  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

The Competitive Telecommunications Association  
Genevieve Morelli  
Vice President and General Counsel  
1140 Connecticut Avenue, N.W.  
Suite 220  
Washington, D.C. 20036

The Competitive Telecommunications Association  
KELLEY DRYE & WARREN LLP  
Danny E. Adams  
Steven A. Augustino  
1200 Nineteenth Street, N.W., Suite 500  
Washington, D.C. 20036

Telecommunications Reselleres Association  
HUNTER & MOW, P.C.  
Charles C. Hunter  
1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006

WORLDCom, INC.  
d/b/a LDDS WorldCom  
Catherine R. Sloan  
Richard L. Fruchterman  
Richard S. Whitt  
1120 Connecticut Avenue, N.W., Suite 400  
Washington, D.C. 20036

Intelcom Group (U.S.A.), Inc.  
Cindy Z. Schonhaut  
Vice President, Government Affairs  
9605 East Maroon Circle  
Englewood, CO 80112

IntelCom Group (U.S.A.), Inc.  
DICKSTEIN, SHAPIRO & MORIN, L.L.P.  
Albert H. Kramer  
Robert F. Aldrich  
2101 L Street, N.W.  
Washington, D.C. 20554

Teleport Communications Group, Inc.  
Teresa Marrero  
Senior Regulatory Counsel  
One Teleport Drive  
Suite 300  
Staten Island, NY 10310

MFS Communications Company, Inc.  
David N. Porter  
Vice President, Government Affairs  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

MFS Communications Company, Inc.  
SWIDLER & BERLIN, Chartered  
Andrew D. Lipman  
Mark Sievers  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Association of Telemessaging Services International  
Herta Tucker  
Executive Vice President  
1200 19th Street, N.W.  
Washington, D.C. 20036

Association of Telemessaging Services International  
Smith, Bucklin & Associates, Inc.  
Frank Moore  
Government Affairs division  
1200 19th Street, N.W.  
Washington, D.C. 20036